

إس إن آر دنتون
SNR DENTON

EXECUTION VERSION

Facility Agreement relating to a Dollar revolving import finance facility of up to \$ 375,000,000

Dated 19 September 2012

Al Khaleej Sugar Company LLC
(as Borrower)

Standard Chartered Bank
(as Arranger)

The financial institutions specified in Schedule 1
(as Original Lenders)

Standard Chartered Bank
(as Agent)

Standard Chartered Bank
(as Security Agent)

Standard Chartered Bank
(as Issuing Bank)

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United Arab Emirates

إس إن آر دنتون وشركاؤهم
الطابق ٢٦
برج الخلي
شارع الشيخ زايد
ص.ب رقم ١٧٥٦
دبي
الإمارات العربية المتحدة

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Facility Agreement

Dated 19 September 2012

Between

- (1) Al Khaleej Sugar LLC, a limited liability company incorporated in the United Arab Emirates with registered number 53836 whose registered office is at Abu Dhabi Commercial Bank Building, 5th and 7th Floor, 72 Riga Road, Deira, Dubai, United Arab Emirates (the **Borrower**);
- (2) Standard Chartered Bank acting through its Dubai branch as arranger (the **Arranger**);
- (3) The financial institutions listed in Schedule 1 as lenders (the **Original Lenders**);
- (4) Standard Chartered Bank acting through its Dubai branch as agent of the other Finance Parties (the **Agent**);
- (5) Standard Chartered Bank acting through its Dubai branch as security agent for the Finance Parties (the **Security Agent**); and
- (6) Standard Chartered Bank acting through its Dubai branch as issuing bank (the **Issuing Bank**)

It is agreed as follows

1 Definitions and construction

1.1 Definitions

In this Agreement:

Accounting Principles means, in relation to the Borrower, the International Financial Reporting Standards issued or adopted by the International Accounting Standards Board.

Additional Cost Rate has the meaning given to it in Schedule 5 (*Mandatory Cost formula*).

Affiliate means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

Auditors means, at any time, PricewaterhouseCoopers or any other firm of chartered accountants of internationally recognised standing who, at that time, are the auditors of the Borrower.

Authorisation means an authorisation, consent (including an Environmental Consent), approval, resolution, permit, licence, exemption, clearance, payment of Tax, filing, notarisation or registration or other requirement of a governmental, judicial or other public body or authority.

Availability Period means the period from and including the date of this Agreement to and including the date falling 21 months after the date of this Agreement.

Available Commitment means, subject to Clause 2.3 (*Commitment*) and Clause 2.4 (*Commitment Reduction*), a Lender's Commitment minus:

- (a) the amount of its participation in any outstanding Loans; and
- (b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made on or before the proposed Utilisation Date.

Available Facility means, subject to Clause 2.3 (*Commitment*) and Clause 2.4 (*Commitment Reduction*), the aggregate for the time being of each Lender's Available Commitment.

Bank Accounts means the Collection Account and the Cash Margin Account.

Break Costs means the amount (if any) by which:

- (a) the interest (excluding Margin) which a Finance Party should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period,

exceeds:

- (b) the amount which that Finance Party would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the London interbank market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

Business Day means a day (other than a Friday, Saturday or Sunday) on which banks are open for general interbank business in London, New York and Dubai and for the purposes of any payment, if the payment is in a currency other than Dollars, the principle financial centre of the territory where that currency is issued.

Cash Margin means, in relation to a Letter of Credit issued under the Letter of Credit Facility, an amount equal to five (5) per cent of the value of the relevant Letter of Credit (and in the same currency as that Letter of Credit).

Cash Margin Account means the Dollar denominated internal account of the Agent into which cash margins debited from the Borrower's account or otherwise received from or on behalf of the Borrower are paid from time to time as determined by the Agent from time to time.

Certified Copy means, in relation to a document, a copy of that document which is:

- (a) certified by a duly authorised officer of the relevant person as being a true, complete and up-to-date copy of that document; or
- (b) notarised as being a true copy of that document.

Class and Grade means, in relation to any Commodity, the class and grade of the relevant Commodity as determined in terms of the Class and Grading Rules.

Class and Grading Rules means, in relation to any Commodity, the international rules, such as LIFFE 5 and ICE 11, in terms of which the relevant Commodity is classified and graded which shall be rules applicable to that Commodity as nominated by the Agent.

Collateral Manager means SGS S.A. (formerly Société Générale de Surveillance) or any other collateral manager appointed by the Security Agent from time to time provided such other collateral manager has entered into a collateral management agreement in form and substance satisfactory to the Agent.

Collateral Management Agreement means any collateral management agreement entered into from time to time between the Security Agent, the Borrower and a Collateral Manager in respect of (inter alia) the monitoring of the Secured Commodities.

Collection Account means the Dollar denominated account held with the Agent in the name of the Borrower with designation Al Khaleej Sugar Company LLC and account number 01-2142430-02.

Commitment means, subject to Clause 2.3 (*Commitment*) and Clause 2.4 (*Commitment Reduction*):

- (a) in relation to an Original Lender, the amount set opposite its name under the heading "Commitment" in Schedule 1 (*The Original Lenders*); and
- (b) in relation to any other Lender and to any Original Lender to whom any Commitment has been transferred under this Agreement, the principal amount of any Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

Committed Amount has the meaning given to that term in Clause 2.3 (*Commitment*)

Commodity means raw and refined sugar.

Commodity Market Value means, in respect of any Consignment of Secured Commodity, the market value of the relevant Consignment of Secured Commodity as listed on ICE or LIFFE, as determined by the Agent.

Compliance Certificate means a certificate substantially in the form set out in Schedule 7 (*Form of Compliance Certificate*)

Consignment means a consignment of Commodity the purchase of which is financed in whole or in part by a Utilisation.

Cost of Funds means, in relation to any Loan, the actual cost (internal and/or external, but excluding statutory costs imposed by governmental authorities or agencies that are applicable as a matter of law at the date hereof) to each Lender of funding the relevant Loan from any source it may reasonably select expressed as a percentage.

Coverage Ratio Requirement means the requirement of the Borrower to ensure that the coverage ratio set out in Clause 23.2 (*Coverage Ratio Requirement*) is complied with.

Dangerous Materials means any element or substance (in any form) that is subject to regulatory control as being hazardous or dangerous or that is capable of causing harm or damage to the Environment.

Default means an Event of Default or any event or circumstance specified in Clause 28 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination or the satisfaction of any condition under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

Discharge Survey Report means, in relation to a consignment of Commodity, a written or electronically generated certificate issued by a Collateral Manager in respect of each such consignment on delivery/release of the relevant consignment which reflects the quantity specifications of the relevant Commodities forming such consignment and which assesses the cleanliness and suitability of the storage/transport facilities being used to store/transport the relevant Commodities at/to the processing plant/delivery address.

Dollars and \$ means the lawful currency for the time being of the United States of America.

Environment means ecological systems, living organisms (including human beings) and all or any of the following media (whether alone or in combination): air (including air within buildings or other structures and whether above or below ground); land (including buildings and any other structures or erections in, on or under it or any soil and anything below the surface of the land); land covered with water; and water (including water under or within land or in pipe or sewerage systems and sea, ground and surface water).

Environmental Consent means any consent, agreement, permit, licence, authorisation or approval required by any Environmental Law.

Environmental Law means all applicable laws and regulations in force at any time relating to Environmental Matters or the Environment.

Environmental Matters means all or any of:

- (a) waste (including packaging waste);
- (b) contaminated land;
- (c) discharges to land, ground, surface and coastal waters and sewers;
- (d) the abstraction of water;
- (e) the extraction of natural resources;
- (f) emissions to air;
- (g) noise, vibration and light;
- (h) Dangerous Materials;
- (i) common law and nuisance, trespass and negligence;
- (j) statutory nuisance;
- (k) radiation, radioactive substances and materials; and
- (l) the conservation or protection of species, habitats, biodiversity, flora and fauna.

Event of Default means any event or circumstance specified as such in Clause 28 (*Events of Default*).

Facility means each of the Import Finance Loan Facility and the Letter of Credit Facility and **Facilities** shall be construed accordingly.

Facility Office means the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five (5) Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement.

Fee Letter means any letter or letters dated on or about the date of this Agreement between the Borrower and all or any of the Arranger, the Agent and the Security Agent setting out any of the fees referred to in Clause 15 (*Fees*).

Final Repayment Date means the date falling 24 months from the date of this Agreement or such later date as may be agreed in accordance with Clause 4 (*Facility Extension*).

Finance Document means this Agreement, any Fee Letter, any Security Document and any other document designated as such by the Agent and the Borrower.

Finance Party means the Arranger, the Agent, the Security Agent, Issuing Bank or a Lender.

Financial Indebtedness means any liability for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with relevant Accounting Principles, be treated as a finance or capital lease;
- (e) any advance payment or other trade credit received more than 90 days before the scheduled delivery date for the consignment of goods to which it relates;
- (f) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (g) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (h) any amount raised pursuant to an arrangement whereby an asset sold or otherwise disposed of by the relevant person may be leased or re-acquired by that person or an Affiliate of that person (whether following the exercise of an option or otherwise);
- (i) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);

- (j) the supply of any goods or services which is more than 60 days past the original due date for payment;
- (k) any counter-indemnity or reimbursement obligation in respect of any guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (l) any shares which are expressed to be redeemable; and
- (m) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (l) above excluding (k) and, in all cases, ensuring that no such liability shall constitute double counting of any amount of indebtedness considered and calculated as an amount under items listed in paragraphs (a) to (l) above.

Futures Contract means a binding contract made on a futures exchange pursuant to which the Borrower agrees to buy or sell a commodity on a stated future date at a specified price, quantity, quality, delivery date, location and delivery time, the purchase or sale price being determined at the time the contract is entered into and the purchase of which is financed in whole or in part by a Utilisation and **Futures Contracts** means any one of them.

Holding Company means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

ICE means the IntercontinentalExchange Inc.

Import Finance Loan Facility means the loan facility made available under this Agreement as described in Clause 6 (*Utilisation – Import Finance Loan Facility*).

Initial Period has the meaning given to that term in Clause 2.4 (*Commitment Reduction*).

Intake means, in relation to any Commodity, the duly completed process of taking delivery of the relevant Commodity at the relevant Warehouse, including measuring, offloading and grading thereof under the supervision of the relevant Collateral Manager.

Interest Period means, in relation to a Loan, each period determined in accordance with Clause 13 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 12.3 (*Default interest*).

Lender means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 30 (*Changes to the Parties*),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

Letter of Credit means a sight or usance documentary letter of credit subject to UCP 600 (or any later revision thereof), if required by the Issuing Bank, governed by English law, and being in compliance with Clause 7.2 (*Completion of a Utilisation Request for Letters of Credit*) and otherwise in form and substance satisfactory to the Issuing Bank and issued by the Issuing Bank pursuant to the Letter of Credit Facility.

Letter of Credit Facility means the letter of credit facility made available under this Agreement as described in Clause 7 (*Utilisation – Letters of Credit*).

Letter of Credit Payment has the meaning given to that term in Clause 8.5 (*Deemed Loans*).

Letter of Credit Payment Date has the meaning given to that term in Clause 8.5 (*Deemed Loans*).

LIBOR means, if applicable, in relation to any Loan:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for dollars for the relevant Interest Period of that Loan) the rate at which the Lender was offering deposits in Dollars in an amount comparable with that Loan to leading banks in the London interbank market,

as of 11 a.m. on the Quotation Day for the offering of deposits in Dollars and for a period comparable to the relevant Interest Period for that Loan.

LIFFE means the London International Financial Futures and Options Exchange

Loan means a loan made or to be made or (in the case of the Import Finance Loan Facility only) deemed to have been made or to be deemed to have been made pursuant to Clause 8.5 (*Deemed Loans*) in each case under the Import Finance Loan Facility or the principal amount outstanding for the time being of the relevant loan.

Loss means any loss, damage, demand, claim, liability, cost (including legal costs) and expense of any kind (including any direct, indirect or consequential losses, loss of profit, loss of goodwill and loss of reputation) whether or not they were foreseeable or likely to occur.

Majority Lenders means:

- (a) if there are no Loans then outstanding, a Lender or Lenders whose Commitments aggregate more than $66\frac{2}{3}$ per cent of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than $66\frac{2}{3}$ per cent of the Total Commitments immediately before the reduction); or
- (b) at any other time, a Lender or Lenders whose participations in the Loans then outstanding aggregate more than $66\frac{2}{3}$ per cent of all the Loans then outstanding.

Manager means the duly appointed manager of the Borrower, from time to time, being Mr. Jamal Majid Al Ghurair as at the date of this Agreement.

Mandatory Cost means the percentage rate per annum calculated by the Agent in accordance with Schedule 5 (*Mandatory Cost formula*).

Margin means 2.75 per cent per annum.

Material Adverse Effect means, in the opinion of the Agent or the Majority Lenders, a material adverse effect on (a) the ability of the Borrower to comply with any of its obligations under any Finance Document; (b) the business, financial condition, assets or prospects of the Borrower; or (c) the validity or enforceability of any Finance Document.

Month means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one or, if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules (a) to (c) will only apply to the last Month of any period.

Net Realisable Value means, in relation to any Commodity, the CIF value of the relevant Commodities as confirmed to the Agent by a party acceptable to the Agent.

NRV Excess has the meaning given to that term in Clause 29.1 (*Borrower payments*).

NRV Excess Payment has the meaning given to that term in Clause 29.1 (*Borrower payments*).

Outstandings means the amount of all outstanding Utilisations, which includes the Loans, the undrawn portion of each Letter of Credit and all amounts paid by the Lenders under all Letters of Credit to the extent the Borrower has not repaid the relevant amounts under Clause 8 (*Letters of Credit*) and such amounts have not resulted in a Loan being deemed to have been made pursuant to Clause 8.5 (*Deemed Loans*).

Original Financial Statements means, in relation to the Borrower, the Borrower prepared financial statements reviewed by the Auditors (including all additional information and notes to the accounts) for its latest financial year.

Party means a party to this Agreement.

Participating Member State means any member state of the European Communities that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Community relating to Economic and Monetary Union.

Permitted Security Interest means any Security Interest falling into one of the categories in Clause 27.3 (*Negative pledge*).

Pledge Agreement means a pledge agreement dated on or about the date of this Agreement in favour of the Security Agent in relation to Commodity owned by the Borrower and stored in a Warehouse in the United Arab Emirates.

Quotation Day means, in relation to any period for which an interest rate is to be determined, two (2) Business Days before the first day of that period.

Release means, in respect of any Secured Commodities, the process of releasing the relevant Secured Commodities from a Warehouse for the purpose of processing and refining and/or sale and **Released** shall be construed accordingly.

Repayment Date means in relation to Loans made or deemed to have been made pursuant to Clause 8.5 (*Deemed Loans*) under the Import Finance Loan Facility, the last day of the Tenor of the relevant Loan.

Repeating Representations means each of the representations and warranties set out in Clause 21 (*Representations and warranties*) except the representations and warranties in Clause 21.8 (*Deduction of Tax*).

Screen Rate means the British Bankers' Association Interest Settlement Rate for Dollars for the relevant period, displayed on the appropriate page of the Moneyline Telerate screen (as at the date of this Agreement, page 3750). If the agreed page is replaced or service ceases to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Borrower and the Lenders.

Secured Commodity means any Commodity secured or, as relevant, to be secured in favour of the Security Agent in connection with a Utilisation.

Security Document means:

- (a) the Pledge Agreement;
- (b) the Tripartite Agreement; and
- (c) any other document creating, evidencing or acknowledging a Security Interest in favour of the Finance Parties (or any of them) in respect of the obligations of the Borrower under any of the Finance Documents, each in form and substance satisfactory to the Agent.

Security Interest means any mortgage, charge, assignment (including by way of security), pledge, hypothecation, lien, right of set-off, retention of title provision, trust or flawed asset arrangement (for the purpose of, or which has the effect of, granting security) or any other security interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same, or any agreement to sell or otherwise dispose of any asset on terms whereby such asset is or may be leased to or re-acquired or acquired by the person selling it or any Affiliate of that person.

Security Period means the period starting on the date of this Agreement and ending on the date on which the Agent is satisfied that all of the liabilities of the Borrower under the Finance Documents are irrevocably discharged in full and no Finance Party has any commitment or liability, whether present or future, actual or contingent, in relation to the Facility.

Standard Terms means the Original Lender's standard terms provided to the Borrower prior to the date of this Agreement, as the same may be replaced from time to time by agreement between the Original Lender and the Borrower.

Subsidiary means, in relation to any company or corporation, any company or corporation (an undertaking) where that first company or corporation:

- (a) holds a majority of the voting rights in the undertaking; or
- (b) holds a membership interest and has the right to appoint or remove the majority of the members of the executive body of the undertaking; or

- (c) has a right to exercise a dominant influence over the undertaking, by virtue of provisions contained in the undertaking's constitutional documents or in a control contract; or
- (d) is a member of the undertaking and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in the undertaking.

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

Tax Deduction means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

Tenor means in respect of a Loan made under the Import Finance Loan Facility or deemed to be made pursuant to Clause 8.5 (*Deemed Loans*), a period of up to 90 days (or such longer period up to 120 days as agreed with the Lenders') as agreed in writing by the Agent and the Borrower prior to the service of, and set out in, the relevant Utilisation Request provided that, in each case, no such Tenor shall extend beyond the Final Repayment Date or, if the Facility is extended pursuant to Clause 4 (*Facility Extension*), the extended Final Repayment Date.

Total Commitments means, subject to Clause 2.3 (*Commitment*) and Clause 2.4 (*Commitment Reductions*), the aggregate of the Commitments, being \$ 300,000,000 at the date of this Agreement.

Transfer Certificate means a certificate substantially in the form set out in Schedule 5 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Borrower.

Transfer Date means, in relation to a transfer, the later of:

- (a) the proposed Transfer Date specified in the Transfer Certificate; and
- (b) the date on which the Agent executes the Transfer Certificate.

Transportation Documents means, in relation to a Consignment, transportation documents, bills of lading, delivery acceptance acts, letters of indemnity, holding certificates, forwarder's certificates of receipt invoices and all other bills, certificates, receipts and other documents relating to that Consignment when in the process of transportation, including all documents against delivery of which payment is to be made under any relevant letter of credit, including all relevant copies, counterparts, or duplicates of the same.

Tripartite Agreement means the agreement to be entered into between the Borrower, the broker and the Agent (on behalf of the Lenders) in relation to the Futures Contacts.

UCP 600 means the ICC Uniform Customs and Practice for Documentary Credits, ICC publication No. 600.

Unpaid Sum means any sum due and payable but unpaid by the Borrower under the Finance Documents.

Utilisation means, in respect of any Facility, a utilisation of the relevant Facility (including a utilisation by way of a deemed Loan pursuant to Clause 8.5 (*Deemed Loans*)).

Utilisation Date means, in respect of any Facility, the date of the relevant Utilisation, being the date on which the relevant Loan is to be made or is deemed to be made pursuant to Clause 8.5 (*Deemed Loans*) or the date on which the relevant Letter of Credit is issued, as the case may be.

Utilisation Request means a notice substantially in the form set out in Part 1 or Part 2 of Schedule 4 (*Utilisation Requests*).

VAT means any turnover tax, sales tax, value added tax and any other tax of a similar nature (howsoever called) imposed by any applicable jurisdiction.

Waiver of Lien means a waiver (in form and substance satisfactory to the Agent) issued by the owner of a Warehouse in respect of all rights which it (or they) may have in relation to Commodities stored in the relevant Warehouse, the purchase of which is being financed by the Facilities.

Warehouse means the storage facility owned by the Borrower, the address of which is set out in the Collateral Management Agreement, at which Commodities financed under this Agreement will be stored from time to time and any other storage facility approved by the Agent from time to time as storage for such Commodities.

Warehouse Receipt means a non-negotiable warehouse certificate signed by a Collateral Manager or an authorised official of a Collateral Manager and co-signed by the depositing party and, if a different party, the Warehouse and given to the order of the Agent, which:

- (a) certifies the receipt into storage of a consignment of the Commodity in good order which specifies the Commodity, together with the type, grade and quantity thereof;
- (b) certifies the details of the depositor and the warehouse into which the Commodity has been accepted;
- (c) certifies the manner of storage of the Commodity; and
- (d) confirms that the Commodity will be delivered (and will only be delivered) on demand upon presentation of the relevant Warehouse Receipt in accordance with the terms specified in it.

Warehouse means the Borrower (or, where relevant, an Affiliate), in its capacity as custodian of the Commodities and owner of the Warehouse facilities in which the Commodity will be stored.

1.2 Construction

1.2.1 Unless a contrary indication appears, any reference in the Finance Documents to:

- (a) **assets** includes revenues, property and rights of every kind, present, future, actual and contingent and whether tangible or intangible (including uncalled share capital);
- (b) any bank **account** is to be construed as a reference to that account as it may be renumbered, redesignated or replaced and to any of its sub-accounts from time to time;
- (c) **Clauses** and **Schedules** are to be construed as references to the clauses of, and schedules to, this Agreement;

- (d) any **Finance Document** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, varied, novated, restated, supplemented or replaced from time to time;
- (e) a **guarantee** includes any guarantee or indemnity, bond, letter of credit, documentary or other credit, or other assurance against financial loss;
- (f) the words **including** and **in particular** shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;
- (g) **indebtedness** includes any obligation whether incurred as principal or as surety for the payment or repayment of money, whether present or future, actual or contingent and whether owed jointly or severally or in any other capacity;
- (h) **liabilities** includes any obligation whether incurred as principal or as surety, whether or not in respect of indebtedness, whether present or future, actual or contingent and whether owed jointly or severally or in any other capacity;
- (i) the words **other** and **otherwise** shall not be construed as being limited by the context in which they appear or the words that precede them;
- (j) any **person** includes one or more of that person's assigns, transferees, successors in title, delegates, sub-delegates and appointees (in the case of a Party, in so far as such assigns, transferees, successors in title, delegates, sub-delegates and appointees are permitted) and any individual, firm, company, corporation, joint venture, body corporate, unincorporated body of persons, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality);
- (k) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (l) any **statute** or **statutory provision** includes any statute or statutory provision which amends, extends, consolidates or replaces it, or which has been amended, extended, consolidated or replaced by it, and any orders, regulations, instruments or other subordinate legislation made under it;
- (m) accounting terms shall be construed so as to be consistent with relevant Accounting Principles; and
- (n) a time of day is a reference to Dubai time.

1.2.2 Section, clause and schedule headings are for ease of reference only.

1.2.3 A Default (other than an Event of Default) is **continuing** if it has not been remedied or waived in writing and an Event of Default is **continuing** if it has not been waived in writing.

1.2.4 If it is necessary to decide whether a non-Dollar amount (either alone or with other amounts) has reached or breached an amount or limit in Dollars, the equivalent in Dollars of that non-Dollar amount will be calculated using the Agent's relevant spot rate of exchange at the relevant time.

1.3 Third party rights

- 1.3.1 Unless expressly provided to the contrary in this Agreement a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the **Third Parties Act**) to enforce or to enjoy the benefit of any term of this Agreement.
- 1.3.2 Notwithstanding any term of any Finance Document, the Parties may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Agreement without the consent of any person who is not a Party.

2 The Facility

2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a short-term Dollar revolving import finance facility in an aggregate amount equal to the Total Commitments.

2.2 Finance Parties' rights and obligations

- 2.2.1 The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- 2.2.2 The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from the Borrower shall be a separate and independent debt.
- 2.2.3 A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

2.3 Commitment

Of the Total Commitments, notwithstanding any other provision of this Agreement, only \$200,000,000 shall be committed (the **Committed Amount**) and amounts in excess of the Committed Amount up to the amount of the Total Commitments shall be uncommitted.

2.4 Commitment Reduction

- 2.4.1 The Total Commitments shall be reduced from \$300,000,000 to the Committed Amount on the last day of the period of 180 days from the date of this Agreement (the **Initial Period**) and the Commitment of each Lender will be reduced pro rata in proportion to its share of the Total Commitments.
- 2.4.2 If, at the end of the Initial Period, the Outstandings under the Facilities are in excess of the Committed Amount, the Agent shall, by no less than five (5) Business Days notice to the Borrower, declare the amount in excess of the Committed Amount, together with accrued interest (the **Excess**), immediately due and payable whereupon the Excess will be immediately due and payable.
- 2.4.3 At the end of the Initial Period, provided that the Lenders consists of more than the Original Lenders, an uncommitted amount may be made available to the Borrower to contribute in full

or part towards the Total Commitment (or such other amount as agreed to between the Parties).

- 2.4.4 Any prepayment under this Clause shall be treated in accordance with Clause 11 (*Prepayment and cancellation*).

3 Purpose

3.1 Purpose

- 3.1.1 The Borrower shall apply all amounts borrowed by it under the Facility towards the financing of the import and storage by the Borrower of the Commodity.

- 3.1.2 The Borrower shall apply:

- (a) the proceeds of all Loans towards:
 - (i) making payments against documents presented under Import Documentary Collection services;
 - (ii) financing inventory held in pre-identified storage locations evidenced by Warehouse Receipts; and
 - (iii) subject to compliance with Clause 23 (*Financial ratios*), in the event of any change in the market value of the Secured Commodity, towards the payment of variation margin calls on corresponding Short Future Contracts assigned in favour of the Security Agent.
- (b) all payments under all Letters of Credit to finance imports.

3.2 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4 Facility Extension

4.1 Extension Option

- 4.1.1 On or before the date falling 90 days before the Final Repayment Date, the Borrower may request that the Facilities be extended for up to 365 days from the Final Repayment Date by delivery to the Agent of an extension request signed by it (an **Extension Request**). Any Extension Request shall include details of the proposed extended Final Repayment Date and Availability Period and any other terms proposed by the Borrower.
- 4.1.2 The Agent shall notify the Borrower on or before the date falling 60 days prior to the Final Repayment Date whether, the Lenders are willing to extend the Facilities in accordance with the relevant Extension Request. The Lenders are not obliged to agree to any Extension Request and may require the Facilities to be extended on any other terms if they see fit (including as to pricing, amount and tenor).

4.2 Acceptance of Extension Option

If the Lenders agree to an Extension Request, and subject to the payment on the Final Repayment Date of any extension fees agreed between the Parties and acceptance by the Borrower of any additional provisions required by the Lenders, the Facilities shall be extended by 365 days or such other period agreed between the Parties subject to the terms agreed by the Lenders and the Borrower.

5 Conditions of utilisation

5.1 Initial conditions precedent

The Borrower may not deliver a Utilisation Request and no Lender shall be obliged to make available its participation in the Facility to the Borrower unless the Agent has received all of the documents and other evidence listed in Part 1 of Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.

5.2 Further conditions precedent

The Lenders will only be obliged to comply with Clause 6.4 (*Lenders' participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) no Default is continuing or would result from the proposed Loan;
- (b) the Coverage Ratio Requirement is not being, and will not as a result of the proposed Utilisation being made be, breached;
- (c) the Repeating Representations to be made by the Borrower are true in all material respects; and
- (d) in respect of the proposed Utilisation, the Agent has received (or shall, where relevant have received on the proposed Utilisation Date) all of the relevant documents and other evidence listed in Schedule 3 (*Conditions Precedent for each Utilisation*) in form and substance satisfactory to the Agent.

5.3 Maximum limit

No Utilisation shall be permitted to the extent that:

- (a) the amount of the relevant Utilisation exceeds the then applicable Available Facility; or
- (b) the making of that Utilisation would result in the Outstandings exceeding:
 - (i) the then applicable Net Realisable Value of the Commodities at that time stored in, or being shipped to, the Warehouses, subject to the terms of the Pledge Agreement; or
 - (ii) the Committed Amount and the Lenders have not consented to that Utilisation.

5.4 Conditions Subsequent

The Borrower shall deliver to the Agent all of the documents and other evidence listed in Part 2 of Schedule 2 (*Conditions subsequent*) in form and substance satisfactory to the Agent as soon as possible after the date of this Agreement but in any event within 30 days of the date of the initial Utilisation Request or such longer period as the Lenders may agree in writing in their sole discretion, except in relation to Part 2 of Schedule 2 in which case the documents and evidence shall be delivered in form and substance satisfactory to the Agent within 60 days of 19 December 2013. The Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.

6 Utilisation – Import Finance Loan Facility

6.1 Delivery of a Utilisation Request

The Borrower may utilise the Import Finance Loan Facility by delivery to the Agent of a duly completed Utilisation Request, substantially in the form of Part 1 of Schedule 4 (*Utilisation Request for Import Finance Loans*), together with all relevant documentation referred to therein not later than 11 a.m. on the third Business Day before the proposed Utilisation Date.

6.2 Completion of a Utilisation Request

6.2.1 Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

- (a) the proposed Utilisation Date is a Business Day within the Availability Period; and
- (b) the currency and amount of the Utilisation comply with Clause 6.3 (*Currency and amount*).

6.2.2 Only one Loan may be requested in each Utilisation Request.

6.3 Currency and amount

6.3.1 The currency specified in a Utilisation Request must be Dollars.

6.3.2 The amount of the proposed Loan must be:

- (a) in compliance with the applicable limits in Clause 5.3 (*Maximum limit*); and
- (b) a minimum of \$100,000 or, if less, the Available Facility.

6.4 Lenders' participation

6.4.1 If the conditions set out in this Agreement have been met, and subject always to Clause 2.3 (*Commitment*), each Lender shall make its participation in each Loan available by its Utilisation Date (or in the case of a Deemed Loan on the relevant Letter of Credit Payment Date) through that Lender's Facility Office.

6.4.2 The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately before making the Loan.

- 6.4.3 The Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan by noon on the third Business Day before the proposed Utilisation Date.

6.5 Cancellation of unutilised Commitments

The unutilised portion of the Total Commitments shall be immediately cancelled at the end of the Availability Period.

6.6 Availability of Import Finance Loans

- 6.6.1 If the conditions set out in this Agreement have been met, each Lender shall make each Loan under the Import Finance Loan Facility available by the Utilisation Date through its Facility Office either:
- (a) directly to the supplier of the Commodity (provided that the bills of lading in respect of the relevant Commodity are made in the Security Agent's name, or where the Security Agent holds the original Bills of Lading, "To order"); or
 - (b) to the Borrower (provided that the Agent receives a fax copy of the Warehouse Receipt prior to Utilisation and is satisfied that the original will be provided to it within five (5) Business Days of the Utilisation Date).

7 Utilisation – Letters of Credit

7.1 Delivery of a Utilisation Request for Letters of Credit

The Borrower may request a Letter of Credit to be issued by delivery to the Agent of a duly completed Utilisation Request substantially in the form of Part 2 of Schedule 4 (*Utilisation Request for Letters of Credit*) (with a copy to the Issuing Bank), together with all relevant documentation referred to therein not later than 11 a.m. on the third Business Day before the proposed Utilisation Date.

7.2 Completion of a Utilisation Request for Letters of Credit

Each Utilisation Request for a Letter of Credit is irrevocable and will not be regarded as having been duly completed unless:

- (a) the proposed Utilisation Date is a Business Day within the Availability Period;
- (b) the currency and amount of the Letter of Credit comply with Clause 7.3 (*Currency and amount*);
- (c) the form of the Letter of Credit is attached (to be in form and substance satisfactory to the Agent);
- (d) the term of the Letter of Credit is no greater than 90 days;
- (e) the expiry date of the Letter of Credit falls on or before the last day of the Availability Period;
- (f) the delivery instructions for the Letter of Credit are specified; and

- (g) the identity of the beneficiary of the Letter of Credit is approved by the Agent (in its sole discretion).

7.3 Currency and amount

- 7.3.1 The currency specified in a Utilisation Request must be Dollars.
- 7.3.2 The amount of the proposed Letter of Credit must be in compliance with the applicable limits in Clause 5.3 (*Maximum limit*).

7.4 Issue of Letters of Credit

- 7.4.1 If the conditions set out in this Agreement have been met and subject always to Clause 2.3, (*Commitment*), the Issuing Bank shall issue the relevant Letter of Credit on the Utilisation Date.
- 7.4.2 The Agent shall notify each Lender (with a copy for the Issuing Bank) of the details of the requested Letter of Credit and its participation in that Letter of Credit by the Utilisation Date.
- 7.4.3 The Agent shall supply the Borrower with a copy of each Letter of Credit issued under this Facility at its request promptly after the Utilisation Date.

7.5 Amending of a Letter of Credit

- 7.5.1 The Borrower may request any Letter of Credit issued on its behalf be extended by amendment by delivery to the Issuing Bank of an extension request together with all relevant documentation and the Issuing Bank may, at its sole discretion, amend any Letter of Credit pursuant to an extension request received subject to the terms of this Clause 7.5.
- 7.5.2 The Agent shall treat any renewal request received in accordance with Clause 7.5.1 in the same way as a Utilisation Request for a Letter of Credit.
- 7.5.3 The terms of each renewed Letter of Credit shall be the same as those of the relevant Letter of Credit immediately prior to its renewal, except that:
- (a) its amount may be less than the amount of the Letter of Credit immediately prior to its renewal; and
 - (b) its term shall start on the date which was the expiry date of the Letter of Credit immediately prior to its renewal, and shall end on the earlier of:
 - (i) the proposed expiry date specified in the relevant renewal request; and
 - (ii) the last day of the Availability Period.
- 7.5.4 If the conditions set out in this Agreement have been met, the Issuing Bank may, at its discretion, amend and re-issue any Letter of Credit pursuant to a renewal request received in accordance with Clause 7.5.1.

8 Letters of Credit

8.1 Assignments and transfers

- 8.1.1 The Borrower may not assign any of its rights or obligations under the Letter of Credit Facility.
- 8.1.2 The Issuing Bank may assign or transfer all or any part of its rights and benefits and obligations under the Letter of Credit Facility to any other person.

8.2 Claims under a Letter of Credit

- 8.2.1 The Borrower irrevocably and unconditionally authorises the Issuing Bank to pay any claim made or purported to be made under a Letter of Credit requested by it and which appears on its face to be in order (a **claim**).

- 8.2.2 The Borrower acknowledges that the Issuing Bank:

- (a) is not obliged to carry out any investigation or seek any confirmation from any other person before paying a claim; and
- (b) deals in documents only and will not be concerned with the legality of a claim or any underlying transaction or any available set-off, counterclaim or other defence of any person.

- 8.2.3 Any payment which the Issuing Bank shall make in accordance with a claim shall be binding on the Borrower and shall be accepted by the Borrower as conclusive and binding evidence that the Issuing Bank was liable to comply with the terms of the relevant claim and was liable to do so in the manner and for the amount in which the Issuing Bank effected such compliance.

- 8.2.4 The obligations of the Borrower under this Clause 8.2 will not be affected by:

- (a) the sufficiency, accuracy or genuineness of any claim or any other document; or
- (b) any incapacity of, or limitation on the powers of, any person signing a claim or other document.

8.3 Immediately payable

If a Letter of Credit or any amount outstanding under a Letter of Credit becomes immediately payable and a Letter of Credit Payment is made in respect of the relevant claim and such Letter of Credit Payment is not reimbursed to the Issuing Bank through the deemed making of a Loan in accordance with Clause 8.5 (Deemed Loans), the Borrower shall immediately pay an amount equal to the relevant Letter of Credit Payment to the Issuing Bank.

8.4 Notification of Claims

The Issuing Bank shall notify the Agent of any claim in respect of which the Issuing Bank is intending to make a Letter of Credit Payment and of the amount of the relevant Letter of Credit Payment and the relevant proposed Letter of Credit Payment Date at least three (3) Business Days prior to that proposed Letter of Credit Payment Date.

8.5 Deemed Loans

- 8.5.1 If a Letter of Credit has been issued by the Issuing Bank, in accordance with the terms of this Agreement, and the Issuing Bank makes a payment in respect of a claim made under and in accordance with the relevant Letter of Credit (a **Letter of Credit Payment**), the Borrower shall be deemed to have requested a Loan under the Import Finance Loan Facility, and a Loan under the Import Finance Loan Facility shall be deemed to have been made by the Lenders to the Borrower, subject to the terms of this Agreement on the date (the **Letter of Credit Payment Date**) on which the relevant Letter of Credit Payment was made by the Issuing Bank.
- 8.5.2 The amount of any Loan deemed to be made pursuant to this Clause 8.5 shall be an amount equal to the amount of the relevant Letter of Credit Payment.
- 8.5.3 The proceeds of each Loan made available by the Lenders, and deemed to be made to the Borrower, in accordance with this Clause 8.5 shall be paid to the Issuing Bank in satisfaction of the Borrower's obligations to reimburse the Issuing Bank for the relevant Letter of Credit Payment under Clause 8.3 (*Immediately payable*).

8.6 Indemnities

- 8.6.1 The Borrower shall immediately on demand indemnify the Issuing Bank and the Lenders against any Loss incurred by the Issuing Bank or any Lender (otherwise than by reason of the Issuing Bank's or the relevant Lender's gross negligence or wilful misconduct) in acting as the issuing bank or lender (as applicable) under any Letter of Credit.
- 8.6.2 The Borrower is responsible for any documents or data it provides to the Agent or the Issuing Bank for transmission to third parties and acknowledges that neither the Agent nor the Issuing Bank is responsible for and has no duty to review such documents before transmission.

8.7 UCP 600

Notwithstanding Clause 7 (*Utilisation – Letters of Credit*) and Clause 8 (*Letters of Credit*), the Borrower and the Issuing Bank agree and acknowledge that every Letter of Credit issued by the Issuing Bank under this Agreement will be strictly subject to UCP600 (or any later revision thereof).

9 Repayment

9.1 Repayment of Loans

The Borrower shall repay each Loan under the Import Finance Loan Facility on the relevant Repayment Date.

9.2 Repayment of all amounts outstanding

Notwithstanding any other provision of this Agreement, the Borrower must pay or repay all amounts owing under the Finance Documents (including under each of the Facilities) on or before the Final Repayment Date.

10 Bank Accounts

10.1 Opening and operation of the Bank Accounts

10.1.1 During the Security Period, the Borrower authorises the Agent to open and maintain the Bank Accounts.

10.1.2 The terms of this Agreement shall override (to the extent of any inconsistency) any terms agreed between the Borrower and the Agent (as account holding bank) in relation to the maintenance and operation of the Bank Accounts unless such terms are agreed after the date of this Agreement and expressly override this Clause.

10.1.3 The Borrower shall pay to the Agent such transaction charges and other fees as the Borrower and the Agent may agree in relation to the operation and maintenance of the Bank Accounts, provided that such charges and fees shall be consistent with the Agent's normal practice.

10.2 Bank Account withdrawals

10.2.1 No withdrawals may be made from any Bank Account except as set out in this Clause 10.2.

10.2.2 At any time prior to the occurrence of an Event of Default the Borrower may withdraw funds standing to the credit of the Collection Account. The Agent shall refuse to allow withdrawals from the Collection Account if an Event of Default has occurred.

10.3 Authority to debit

10.3.1 The Borrower authorises the Agent, at any time and without notice to the Borrower, to debit the Collection Account and apply such debited funds in or towards discharge of such of the Borrower's obligations under the Finance Documents as are then due and payable but unpaid.

10.3.2 The Borrower authorises the Agent, at any time and without notice to the Borrower, to debit the Cash Margin Account and apply such debited funds in or towards discharge of such of the Borrower's obligations under the Finance Documents in respect of any Letter of Credit as are then due and payable but unpaid.

11 Prepayment and cancellation

11.1 Illegality

If it becomes unlawful in any jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan:

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Borrower, the Commitment of that Lender will be immediately cancelled; and

- (c) the Borrower shall repay that Lender's participation in each Loan on the last day of the then current Interest Period for that Loan occurring after the Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law).

11.1.2 If it becomes unlawful for the Issuing Bank to issue or maintain any Letter of Credit, the Issuing Bank shall promptly notify the Borrower and the Agent upon becoming aware of that event and upon such notification:

- (a) the Letter of Credit Facility shall cease to be available for the future issue of Letters of Credit;
- (b) the Borrower shall repay to the Issuing Bank any Unpaid Sums that are owed to the Issuing Bank at that time under Clause 8.2 (*Claims under a Letter of Credit*) in respect of all Letters of Credit; and
- (c) the Borrower shall pay into the Cash Margin Account an aggregate amount equal to the amount by which all undrawn Letters of Credit exceeds the amount standing to the credit of the Cash Margin Account at the relevant time to the extent such amount was paid into the Cash Margin Account by the Borrower or is otherwise referable to the Borrower and relates to the Finance Documents or the transactions contemplated therein.

11.2 Change of control

11.2.1 If Mr. Jamal Majid Ahmed Al Ghurair ceases to:

- (a) control the Borrower; or
- (b) be the duly appointed manager of the Borrower,
 - (i) the Borrower shall promptly notify the Agent upon becoming aware of that event;
 - (ii) a Lender shall not be obliged to fund a Utilisation; and
 - (iii) if the Majority Lenders so require, the Agent shall, by not less than 10 days' notice to the Borrower, cancel the Total Commitment and declare all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Total Commitments will be cancelled and all such outstanding amounts will become immediately due and payable.

11.2.2 For the purpose of Clause 11.2.1 **control** means holding shares in the issued share capital of the Borrower carrying the right to exercise at least 43 per cent of the votes exercisable at a general meeting of the Borrower.

11.3 Voluntary cancellation

The Borrower may, if it gives the Agent not less than 30 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of \$1,000,000) of the Available Facility provided that immediately following such cancellation the amount of the Total Commitments is not less than the Committed

Amount. Any cancellation under this Clause 11.3 shall reduce the Commitments of the Lenders rateably.

11.4 Voluntary prepayment of Loans

- 11.4.1 The Borrower may, if it gives the Agent not less than five (5) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of \$1,000,000).

11.5 Right of repayment and cancellation in relation to a single Lender

11.5.1 If:

- (a) any sum payable to any Lender by the Borrower is required to be increased under Clause 16.1 (*Tax gross-up*); or
- (b) any Lender claims indemnification from the Borrower under Clause 16.2 (*Tax indemnity*) or Clause 17 (*Increased Costs*),

the Borrower may, whilst the circumstance giving rise to the requirement for indemnification continues, give the Agent not less than seven Business Days' (or such shorter period as the Majority Lenders may agree) prior notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Loans.

- 11.5.2 On receipt of a notice referred to in Clause 11.5.1, the Commitment of that Lender shall immediately be reduced to zero.

- 11.5.3 On the last day of the then current Interest Period for each Loan that ends after the Borrower has given notice under Clause 11.5.1 (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in that Loan.

11.6 Restrictions

- 11.6.1 Any notice of cancellation or prepayment given by any Party under this Clause 11 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

- 11.6.2 Any prepayment under this Agreement shall be made together with:

- (a) accrued interest on the amount prepaid; and
- (b) any Break Costs.

- 11.6.3 The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

- 11.6.4 No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated except with the Lenders' consent.

- 11.6.5 If the Agent receives a notice under this Clause 11 it shall promptly forward a copy of that notice to either the Borrower or the affected Lender, as appropriate.

12 Interest

12.1 Calculation of interest

The rate of interest on each Loan for each Interest Period is the percentage rate per annum determined by the Agent to be the aggregate of the applicable:

- (a) Margin;
- (b) if applicable, LIBOR or, the relevant Lender's Cost of Funds (as determined by each Lender in respect of its portion of any Loan on an Interest Period by Interest Period basis); and
- (c) Mandatory Cost, if any and for the avoidance of doubt, Mandatory Costs will not be applied unless:
 - (i) the Facility Office is located in a Participating Member State or the United Kingdom); and
 - (ii) LIBOR is applied in calculating the rate of interest applicable to that Loan.

12.2 Payment of interest

The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period applicable to the relevant Loan.

12.3 Default interest

12.3.1 If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which is two (2) per cent higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 12.3 shall be immediately payable by the Borrower on demand by the Agent.

12.3.2 Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

12.4 Notification of rates of interest

The Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.

13 Interest Periods

13.1 Duration of Interest Periods

13.1.1 An Interest Period for a Loan (including any Loan deemed to be made pursuant to Clause 8.3 (*Deemed Loans*)) shall be from the Utilisation Date until the end of the relevant Tenor.

- 13.1.2 An Interest Period shall not extend beyond the Repayment Date for the relevant Loan.
- 13.1.3 Each Interest Period for a Loan (including any Loan deemed to be made pursuant to Clause 8.3 (*Deemed Loans*)) shall start on its Utilisation Date.

13.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

14 Changes to the calculation of interest

14.1 Absence of quotations

Subject to Clause 14.2 (*Market disruption*), if LIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by 11 a.m. on the relevant Quotation Day, the applicable LIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

14.2 Market disruption

- 14.2.1 If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the percentage rate per annum which is the sum of:

- (a) the Margin;
- (b) the rate notified to the Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select; and
- (c) the Mandatory Cost, if any, applicable to that Lender's participation in the Loan.

- 14.2.2 In this Agreement **Market Disruption Event** means:

- (a) at or about noon on the Quotation Day for the relevant Interest Period the Screen Rate is not available and none or only one of the Reference Banks supplies a rate to the Agent to determine LIBOR for the relevant Interest Period or the Agent otherwise determines that, because of circumstances affecting the London interbank market generally, reasonable and adequate means do not exist for ascertaining LIBOR for that Loan and the relevant Interest Period; or
- (b) before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notifications from one or more Lenders (whose participations in a Loan exceed 33 per cent of that Loan) that, in the opinion of the Lender, the cost to it of obtaining matching deposits in the London interbank market would be in excess of LIBOR or matching deposits may not be available to it in the London interbank market in the ordinary course of business.

14.3 Alternative basis of interest or funding

- 14.3.1 If a Market Disruption Event occurs and the Agent or the Borrower so requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest.
- 14.3.2 Any alternative basis agreed pursuant to Clause 14.3.1 shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties and, in the absence of such consent, the rate shall be determined in accordance with Clause 14.2.1 for as long as the Market Disruption Event continues.

14.4 Break Costs

- 14.4.1 The Borrower shall, within three (3) Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- 14.4.2 Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

15 Fees

15.1 Commitment fee

- 15.1.1 The Borrower shall pay to the Agent (for the account of each Lender) a fee computed at the rate of 0.5 per cent per annum on that Lender's Available Commitment in respect of the Committed Amount for the Availability Period.
- 15.1.2 The accrued commitment fee is payable on the last day of each successive period of three (3) Months which ends during the Availability Period, on the last day of the Availability Period.

15.2 Arrangement fee

The Borrower shall pay to the Arranger an arrangement fee in the amount and at the times agreed in the relevant Fee Letter.

15.3 Agency fee

The Borrower shall pay to the Agent (for its own account) an agency fee in the amount and at the times agreed in the relevant Fee Letter.

15.4 Security Agent's fee

The Borrower shall pay to the Security Agent (for its own account) a fee in the amount and at the times agreed in the relevant Fee Letter.